



May 29, 2009

General Services Administration  
FAR Secretariat (VPR)  
1800 F Street, N.W., Room 4041  
Attn: Hada Flowers  
Washington, D.C. 20405

Re: FAC 2005-32, FAR Case 2009-008

Dear FAR Secretariat:

The American Manufacturing Trade Action Coalition (AMTAC), National Council of Textile Organizations (NCTO), National Textile Association (NTA), U.S. Industrial Fabrics Institute (USIFI), and the labor union Workers United are submitting comments with respect to the interim rule to implement the American Recovery and Reinvestment Act of 2009 – Buy American Requirements for Construction Material. See Federal Acquisition Regulation; FAR Case 2009-008 and see 74 Fed. Reg. 14623 (March 31, 2009).

### **Background on U.S. Textile Industry and Its Relationship to Public Works**

The U.S. textile industry and its textile and apparel workers are commenting on this interim rule because tens of millions of square meters of textile and apparel products manufactured domestically are used in U.S. public works projects annually.

AMTAC, NCTO, NTA, USIFI, and Workers United represent substantially all of the U.S. supply chain from fiber production to the final assembly of textile and apparel products used in public works projects. Textile and apparel production stages include fiber production, yarn and thread spinning or extruding, fabric formation, weaving or knitting, dyeing and finishing, cutting, and final assembly. Textile production is a high-tech, highly capital intensive manufacturing sector.

Approximately 540,000 Americans work in the U.S. fiber, textile, and apparel sectors including 127,600 in textile mill, 127,200 in textile product mill, and 169,100 in apparel manufacturing and additional 116,275 in the cotton industry.

Textile and apparel products are indispensable to the construction of public works. For example, geosynthetics have a wide range of applications and are used in many civil, geotechnical, transportation, geoenvironmental, hydraulic, and private development applications including roads,

airfields, railroads, embankments, retaining structures, reservoirs, canals, dams, erosion control, sediment control, landfill liners, landfill covers, mining, aquaculture and agriculture for separation, reinforcement, filtration and/or drainage purposes. The combined U.S., Canadian, and Mexican market for geosynthetics is an estimated \$1.5 billion.

Textile products also are used in public works projects for insulation purposes. Fiberglass insulation, energy-saving pipe wraps, hot works fabrics used to prevent damage while welding in close quarters, etc are just some examples. The use of other textile products such as, but not limited to, roofing fabrics, tarps, covers, webbing products, and narrow fabrics are common too.

Last but not least, the U.S. textile industry manufactures components for U.S. apparel industry workers who then assemble the hazmat suits, tool belts, masks, work pants, shirts, gloves, load bearing equipment, etc. and other textile products used by workers in public works projects.

**Comment – The Interim Regulations Submitted by the Office of Management and Budget (OMB) Fail to Implement Section 1605 of the American Recovery and Reinvestment Act of 2009 Fully and Faithfully**

A plain reading of Section 1605 combined with the intent of the President and Congress show that the interim OMB regulations directly violate the act by impermissibly allowing for the use of non-domestic manufactured goods for the construction, alteration, or repair of public works. Consequently, the interim rule must be changed to implement the new stimulus law fully and faithfully. To that end, those submitting this comment have four areas of significant concern that we will discuss.

Allowing for the use of non-domestic manufactured goods, and especially their component parts, for the construction, alteration, or repair of public works will have a significant negative impact on the job creating capability of the stimulus. With respect to the textile mill and textile product mill sectors, an estimated 8,300 jobs are created for each \$1 billion in new output. Furthermore, each new job created by the federal government's procurement of textile products supports production capacity that saves an estimated one additional job in the industry. Lastly, each manufacturing job created generates a minimum of 1.5 new jobs outside the manufacturing sector. Based on these assumptions, we estimate that  $(8,300 + 8,300 + 12,450)$  29,050 jobs would be created or saved for each \$1 billion (2,905 jobs for every \$100 million) in new spending on manufactured textile products.

The express intent for enacting the American Recovery and Reinvestment Act of 2009 was to stimulate the U.S. economy by creating jobs and encouraging investment. This should be self-evident considering the fact that the United States is suffering from its first 10-year actual decline in industrial output since the 1929-1939 timeframe. U.S. manufacturing output also has seen an actual 10-year decline, its first since the late 1940s and the worst since the 1929-1939 timeframe. U.S. textile mill, textile product mill, and apparel output has fallen even more precipitously in the last ten years, dropping by 55, 37, and 59 percent respectively.

Moreover, the United States has run a cumulative trade deficit in excess of \$3.6 trillion in manufactured goods during the past eight years and a current account deficit of nearly \$5 trillion. Our foreign trading partners then stashed much of these surpluses in the U.S. financial system, helping to

fuel the credit bubble that burst and crippled the U.S. economy by weighing it down with debt unprecedented in the history of the United States.

The trade deficits and loss of output are key reasons why total U.S. nonfarm, private sector, and manufacturing employment are lower as of April 2009 than they were in December 2000, December 1999, and June 1941, respectively, according to the U.S. Bureau of Labor Statistics. Since 2001, the United States has lost a staggering 4,962,000 manufacturing jobs, including 622,300 jobs textile and apparel manufacturing sectors.

Facts like these are why Speaker of the U.S. House of Representatives Nancy Pelosi in her remarks in support of the stimulus said,

“After all of the debate, this legislation can be summed up in one word, “jobs” – new jobs for the 3.6 million Americans who were put out of work since the recession began in December 2007, new jobs and an economy transformed by this legislation's new investments in health, education, science, innovation, and in clean, efficient American energy, new jobs created through modernizing America's roads, bridges, transit systems, and waterways. It is the first such large-scale effort in half a century since the creation of the Interstate Highway System under President Eisenhower. The jobs that the American people care about most – their own – will be dramatically safer the day that President Obama signs this into law.”<sup>1</sup>

It is also why after signing the stimulus package into law, President Obama said,

“Now, what makes this recovery plan so important is not just that it will create or save 3.5 million jobs over the next two years, including 60,000-plus here in Colorado. It's that we're putting Americans to work doing the work that America needs done in critical areas that have been neglected for too long; work that will bring real and lasting change for generations to come.

Because we know we can't build our economic future on the transportation and information networks of the past, we are remaking the American landscape with the largest new investment in our nation's infrastructure since Eisenhower built an Interstate Highway System in the 1950s. Because of this investment, nearly 400,000 men and women will go to work rebuilding our crumbling roads and bridges, repairing our faulty dams and levees, bringing critical broadband connections to businesses and homes in nearly every community in America, upgrading mass transit, building high-speed rail lines that will improve travel and commerce throughout our nation.”<sup>2</sup>

In light of the job creation data we have provided and the comments made by the Speaker, the President, and other Members of Congress<sup>3</sup>, it is deeply disconcerting that the interim rule issued by

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<sup>1</sup> Remarks by U.S. House Speaker Nancy Pelosi during floor debate on stimulus from the Congressional Record, page 1565, on February 13, 2009.

<sup>2</sup> Remarks by the President and Vice President at Signing of the American Recovery and Reinvestment Act, Denver Museum of Nature and Science in Denver, Colorado on February 17, 2009.

<sup>3</sup> See attached March 3, 2009 letter from Congressman John M. Spratt, Jr. to Al Matera, Chair of the Civilian Agency Acquisition Council (CAAC) and Linda W. Neilson, Chair of the Defense Acquisitions Regulations Council (DARC)

OMB fails to comport with legislative and executive intent by including loopholes that allow for imported goods and decreased domestic content that will destroy U.S. jobs and hinder investment.

**First**, we note that the interim rule amends FAR 25.001(c)(1) by waiving the component test for commercially available off-the-shelf items (COTS) for all procurement regardless of whether it falls under the stimulus. The component test mandates that the costs of all the domestic components in the final product must exceed 50 percent of the cost of all the components for the acquisition. This provision represents a substantial change to existing U.S. procurement law not governed by the stimulus and directly is at odds with the enactment of stimulus legislation that adds “Buy American” requirements to existing law.

**Second**, we also note that the interim rule adds a new FAR 25.001(c)(4) that eliminates any rule of origin for components used to manufacture domestic construction material. With the exception of iron and steel, manufactured goods used in public works spending not covered by the stimulus are subject to the Buy American Act of 1933. Again, that law employs a two-step test to determine whether a product has been manufactured in the United States. Specifically, the Buy American Act of 1933 requires that the final substantial transformation must occur in the United States and the costs of all the domestic components in the final product must exceed 50 percent of the cost of all the components.

We are deeply concerned that the interim rule explicitly rejects use of this minimal standard by effectively promulgating a single-transformation rule whereby a manufactured good only need be assembled in the United States and with no rule of origin for the component parts.

This interim rule rejects not only the intent of President Obama and the United States Congress in their desire to create jobs and stimulate investment in the American Recovery and Reinvestment Act of 2009, but it also deviates from the existing law and regulations governing the purchases of goods covered by the stimulus package. These products already were covered under the Buy American Act of 1933. At a minimum, any final rule must at least preserve the basic requirements of that statute – namely assembly in the United States with a U.S. component requirement in excess of 50 percent.

In fact, if OMB wanted to be even more aggressive in creating jobs and stimulating domestic investment, a rule requiring greater component content could be written, especially with respect to textile and apparel products. Since 1941, the U.S. Department of Defense has been procuring all of its textile and apparel products under a rule known as the “Berry Amendment” that requires 100 percent U.S. content and assembly. A vibrant and healthy regulatory framework long has been in place to support this requirement and it easily could be adapted to the portion of the stimulus covered by the “Buy American” requirements without violating any U.S. international obligations. We strongly recommend that OMB implement this kind of rule for textile and apparel procurement subject to the “Buy American” requirements in Section 1605 of the American Recovery and Reinvestment Act of 2009 to achieve the maximum job creation sought by the President and Congress in enacting the stimulus.

**Third**, the waiver system associated with implementing the American Recovery and Reinvestment Act of 2009 is flawed because it lacks sufficient transparency and notice. Under the process in the interim rule, domestic producers only will receive notice of a waiver after it has been given. For the textile sector, free trade agreements such as the CAFTA include a short supply process whereby U.S.

domestic producers must be given prior notice to the U.S. government making a determination of non-availability. This gives domestic producers an opportunity to prove whether they can manufacture a particular product before the business is lost. Because waivers, due to a lack of transparency, have been a past source of abuse to domestic producers in the government procurement process, it would be counterproductive to the intent of the law, and to the pressing economic needs at hand, if this process continued. The rule should include prior notice of applications for waivers with an expedited process for comment and decision making. As part of the notice, any applications to waive the “Buy American” provisions in the stimulus for textile and apparel products should be e-mailed to any trade associations and domestic manufacturers desiring to be on such an alert list. Also, waiver regulations should include a requirement that all waivers be posted at a single website after being granted for ease of public monitoring in addition to being published in the federal register. This would provide the type of transparency that President Obama has pledged will be a hallmark of his Administration.

**Fourth**, the interim rule is written too narrowly. It should include all manufactured goods – meaning more than simply construction materials. A plain reading of the statutory language of Section 1605 inescapably leads to the logical conclusion that manufactured goods “used in the project” would include the equipment and tools necessary to construct, maintain, alter or repair the building or work. With respect to textile and apparel products, this means all hazmat suits, tool belts, masks, tarps, covers, safety straps, construction clothing, gloves, etc. purchased by the contractor as part of doing the work should be covered by the rule. Not doing so will diminish the job creation and manufacturing output expansion intended by the act.

**Conclusion – The Interim Rule Must Be Changed as Outlined Above to Implement the American Recovery and Reinvestment Act of 2009 Fully and Faithfully**

While waiving the component test, narrowing the scope, and failing to issue notices of waiver requests may ease the administrative burden for procurement officers in implementing the stimulus, the President and Congress enacted the American Recovery and Reinvestment Act of 2009 to create jobs and stimulate investment – not to give OMB free license to gut the statute for the simple case of administrative ease. That is why the interim rule must be rewritten to implement the American Recovery and Reinvestment Act of 2009 fully and faithfully.

With respect to manufactured textile and apparel products used in the public works projects funded by the stimulus, the trade associations and labor union submitting this comment stand ready to work in any way we can with OMB to produce a better rule.

Thank you for your consideration in this matter.

American Manufacturing Trade Action Coalition (AMTAC)  
National Council of Textile Organizations (NCTO)  
National Textile Association (NTA)  
U.S. Industrial Fabrics Institute (USIFI)  
Workers United

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March 3, 2009

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Mr. Al Matera  
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Ms. Linda W. Neilson  
Chair, Defense Acquisitions Regulations Council  
Defense Procurement and Acquisition Policy  
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Room 3B855  
Washington, DC 20301-3060

Dear Mr. Matera and Ms. Neilson:

I am writing to outline my concerns with respect to the guidelines that Civilian Agency Acquisition Council (CAAC) and Defense Acquisitions Regulations Council (DARC) are drafting to implement the "Buy America" provisions included in Division A, Title XVI, Section 1605 of H.R.1, the American Recovery and Reinvestment Act of 2009.

The Buy America provisions are important to my state and its textile and apparel producers. With our country in the midst of the worst economic downturn in almost thirty years, it is important that the regulations administering these provisions be interpreted as Congress intended so that local employers and their workers may fully realize the benefits of the stimulus.

My concerns regarding the regulations are threefold:

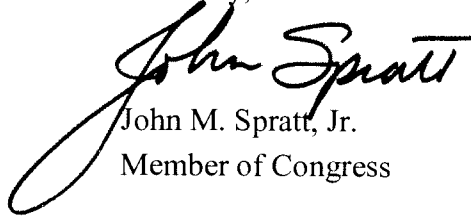
- 1) They should use the long-standing definition of a manufactured good: The Buy America provisions should employ the two-step test as used in the 1933 Buy America act which requires that the final substantial transformation must occur in the United States and the costs of all the domestic components in the final product must exceed 50 percent of the cost of all the components.
- 2) Any waivers must be transparent and immediately accessible: In the past, the waiver system has been a source of abuse because the process for issuing has not been fully transparent. It would be counterproductive to the intent of the law, and to the pressing economic needs at hand, if this process continued. I suggest that the waiver regulations include a requirement that all waivers be posted at a single website within five days of being granted. This would provide the type of transparency that President Obama has pledged will be a hallmark of his Administration.
- 3) Regulations for transportation and other public works projects must require that all manufactured goods, including textile products, be manufactured in the United States: I want

to confirm that regulations for all transportation and public works projects, including projects funded by the Federal Highway Administration, under the stimulus will mandate the procurement of textiles and other U.S.-manufactured goods under all statutes, including the Surface Transportation Assistance Act of 1982, that are exempt from the World Trade Organization (WTO) Agreement on Government Procurement (GPA) and the various free trade agreements signed by the United States. Secondly, I want to confirm that these projects will be required to purchase other U.S. manufactured goods, including textile products in addition to iron, and steel as intended by the Recovery Act.

Thank you for your assistance and I look forward to working with you to ensure that America's working families receive the maximum amount of benefits from this Act.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink that reads "John Spratt". The signature is written in a cursive style with a large, sweeping initial "J".

John M. Spratt, Jr.  
Member of Congress

Cc: Peter Orszag, OMB  
Amy Williams, OSD  
Edward Loeg, GSA  
Meredith Murphy, GSA  
Julia Wise, EOP